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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,344	12/31/2003	Francis J. Manasek	057200/0121189	9476

7590 03/21/2006

Norma E. Henderson, Esq.  
Hinckley, Allen & Snyder LLP  
2nd Floor  
43 North Main Street  
Concord, NH 03301-4934

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/750,344

Applicant(s)

MANASEK, FRANCIS J.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,3,5,6,8-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,5,6,8-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>12/23/05</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                                     |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Upon further review and in light of the amendment to the claims, the election requirement is withdrawn.

### ***Response to Arguments***

2. Applicant's arguments filed 12/27/05 have been fully considered but they are not persuasive. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 3, 5, 6, 8, 9-11, and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yabrov in view of Grosse USPN 5665081.

As to claims 2, 3, 15, and 20, Yabrov discloses an article for protection from anal soiling comprising an impervious outer layer (col. 4, lines 14-17); an absorbent middle layer 7; and a porous inner layer 1 – Yabrov discloses outer shell 1 comprises lignin paper (col. 3, lines 39-40), and the examiner has reasonable factual basis to conclude the shell 1 is liquid permeable as it covers the absorbent pad 7 (Figure 3). The invention of Yabrov comprises a narrow end and a wide end that is capable of fitting over a users buttocks region (Figures 1, 2, and 8a-10c). Yabrov does not disclose a dam on the article. Grosse discloses an anal pad having a dam for the benefit of extending in the anal region to attenuate noise emanating therefrom (Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the pad of Yabrov with a dam as taught in Grosse for the benefits Grosse discloses.

Yabrov/Gross does not disclose an additional absorbent pad providing a dam. The dam taught in Grosse is an integral part of the absorbent layer rather than a separate additional pad. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an additional absorbent pad to form the dam since constructing a formerly integral structure in various elements involves only routine skill in the art.

As to claims 10, 11, and 18, Yabrov/Gross does not specifically disclose a pear-shaped article in that the edges of the Yabrov invention are not rounded, which typically denote a pear or gourd shape. The fact that Yabrov does not disclose a specific pear shape (with rounded edges) is what is considered by the Examiner to be a matter of

Art Unit: 3761

design choice, since applicant has not disclosed that the rounded edge feature solves any stated problem or is for any particular purpose. Yabrov solves the same problem and has essentially the structure that is considered significant by the applicant, the narrowed end region and widened end region and it appears that the invention would perform equally well with the straight edges in the Yabrov invention. The problem of fit and comfort is solved by the narrowed end region and widened end region, which Yabrov teaches. It would have been an obvious matter of design choice to provide the article of Yabrov with a pear shape – rounded edges, since such a modification would have involved a mere change in the shape of the component.

As to claims 5, 6, and 16, Yabrov discloses an adhesive 8 on the back of the outer shell 1 (col. 4, lines 9-13) for removable attachment of the article to a garment. Yabrov does not disclose the outer shell 1 is impervious. Instead Yabrov discloses a separate impervious layer in combination with the outer shell 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yabrov to have an adhesive attached to an outermost impervious layer since forming in one piece an article, which has formerly been formed in two pieces and put together involves only routine skill in the art.

As to claims 8, 9, and 17, see Figure 10a-10c.

As to claims 13, 14, and 19, Yabrov/Grosse teaches the length of the pad is variable for men and women and takes into account the differences in genital structure between men and women (Yabrov col. 3, lines 21-26).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

March 15, 2006